UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	EDCV 17-01089 AG (KKx)	Date	July 31, 2017
Title	APRIL E. DIGGS v. OCWEN LOAN SERVICING, LLC ET AL.		

Present: The Honorable	ANDREW J. GUILFORD	
Lisa Bredahl	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	

Proceedings: **[TENTATIVE] ORDER REGARDING MOTION TO DISMISS COMPLAINT**

Plaintiff April E. Diggs, proceeding *pro se*, sued Defendants Ocwen Loan Servicing, LLC, U.S. Bank, N.A., and the law firm of Barrett Daffin Frappier Treder & Weiss LLP. Among other things, Plaintiff purports to allege violations of the Fair Debt Collection Practices Act ("FDCPA"), *see* 15 U.S.C. § 1692 *et seq.* (Compl., Dkt. No. 1 at 16–23.) Now, Defendants move to dismiss the complaint for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). They argue, for example, that Plaintiff's claims are barred by the doctrine of *res judicata*, that her claim under the FDCPA fails because Defendants aren't "debt collectors," and that her remaining claims are all otherwise inadequately stated or meritless. (Mot. to Dismiss, Dkt. No. 13 at 4–13.)

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." With that liberal pleading standard, the purpose of a motion under Rule 12(b)(6) is "to test the formal sufficiency of the statement of the claim for relief." 5B C. Wright & A. Miller, Federal Practice and Procedure § 1356, p. 354 (3d ed. 2004). To survive a motion to dismiss, a complaint must contain sufficient factual material to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Plaintiff hasn't filed an opposition to the pending motion, *see* C.D. Cal. L.R. 7-9, and the pending motion may indeed have merit. Perhaps reflecting this, Plaintiff has filed an amended complaint. Under Federal Rule of Civil Procedure 15(a)(1)(B), "[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under Rule 12(b)." Here, it appears that Plaintiff timely exercised her one-time "right" to amend the complaint without the Court's permission. *See Ramirez v. Cty. of San Bernardino*, 806 F.3d 1002, 1007 (9th Cir. 2015). And Defendants, to the best of the Court's knowledge, haven't raised any objections to the amendment. Because there's a newly operative complaint, it follows that the motion to dismiss is MOOT. (Dkt. No. 13.)

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